



Department of Energy

Washington, DC 20585

March 14, 2000

MEMORANDUM FOR THE DEPUTY SECRETARY

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT: Charitable Giving Requirements in Department of Energy Contracts
(HQ-L-00-01)

It recently came to our attention that several contracts awarded by the Department to manage its facilities include clauses requiring charitable giving by the contractors. In pursuit of this matter, the Office of Inspector General conducted a limited review and identified three recent solicitations and corresponding contracts that did, in fact, contain such provisions. These provisions are over and above contractor requirements for local economic development. One contract, for example, requires the contractor to contribute \$1 million per year to "educational, cultural, civic, and health and welfare organizations" for each year of the contract. This was consistent with the contractor's commitment made in response to the Department's terms for soliciting bids. The level of giving with respect to the other two contracts we reviewed is \$860,000 over the life of one contract and a minimum of \$600,000 per year in the other contract. A listing of the solicitations and contracts is attached.

The contract language suggests that the costs associated with charitable giving will be treated as expressly unallowable. Nonetheless, these requirements are troubling. Specifically, we found examples where:

- the extent of charitable giving was a factor in the source evaluation process;
- in at least one case, the record of giving is to be considered in determining whether to extend the contract;
- the commitment to an "acceptable" level of charitable giving was a prerequisite to bid consideration in at least one case;
- in one case, the contractor, as described in the contract, is required to fund such items as local symphonies and "downtown street festivals;" and,
- at least one contractor's commitment linked the level of contributions in its Community and Economic Development Plan to the level of fees later received.

Two out of the three contractors involved are for-profit concerns. As such, it is reasonable to assume that the bidders, directly or indirectly, have factored these charitable giving requirements into their fee negotiations. Thus, these requirements may undermine the spirit of Federal and Department of Energy acquisition policies which treat contractor



costs associated with charitable giving as expressly unallowable. These provisions also may create a perverse incentive to award contracts (or determine fees) based not only on technical merit, but also, on the extent to which the contractor provides financial support to local charitable organizations. Further, these provisions may distract the affected contractors from the core tasks they were retained to perform, such as environmental remediation and waste management.

Related to these concerns, the Office of Inspector General has issued a number of audit reports with findings on contractor incentives for local job creation and other economic development. For example, the Office of Inspector General determined at one location that the contractor was not creating jobs comparable to those being lost through worker and community transition, and, therefore, may not have been meeting the goals of the contract. At another location, the Office of Inspector General could not adequately validate the contractor's claim that it had created jobs totaling \$11 million in new payroll, as required by the contract, due to the absence of adequate supporting data. A listing of these reports is attached. We have also reviewed and commented on the significant increases in the fee structures of the Department's prime contractors.

The Office of Inspector General supports the notion that contractors selected to manage the Department's sites should be good corporate citizens. In this regard, contributions to local charitable entities are commendable provided they are voluntary in nature. However, the structure of the solicitations and contracts that we identified include mandatory commitments for charitable giving which are, in our judgment, problematic.

In the interest of promptly alerting the Department of our concerns, I recently discussed this issue with your staff. It is also appropriate to review this issue in light of the fact that a number of significant facility operating contracts are currently out for bid, including, for example, a contract for management of the Y-12 facility. Because we have expedited the process by reporting this matter directly to you, management has not been previously advised of our concerns through a draft report and likewise, has not had an opportunity to provide comments.

Recommendation

We recommend that the Department identify all contracts with charitable contribution provisions as described earlier in this memorandum and evaluate whether they are in the best interest of the Government.

Attachments

cc: Director, Office of Management and Administration
Director, Office of Procurement and Assistance Management

DEPARTMENT OF ENERGY CONTRACTS REVIEWED

The contracts and solicitations reviewed by the Office of Inspector General are:

- DE-RP07-99ID13727 and DE-AC07-99ID13727 (Idaho National Environmental and Engineering Laboratory);
- DE-RP05-99OR22725 and DE-AC05-00OR22725 (Oak Ridge National Laboratory);
and
- DE-RP05-97OR22700 and DE-AC05-98OR22700 (Oak Ridge, Portsmouth, and Paducah).

**OFFICE OF INSPECTOR GENERAL REPORTS RELATING TO
ECONOMIC DEVELOPMENT**

- "Bechtel Jacobs Payroll Creation," ER-B-99-06, April 1999
- "Project Hanford Management Contract Costs and Performance," DOE/IG-0430, November 1998
- "Audit of the Mound Plant Transition to Community Use," ER-L-98-01, June 1998
- "Audit of the Department of Energy's Economic Development Activities at the Pinellas, Mound, and Rocky Flats Plants," ER-L-97-02, February 1997